

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 320 of 1989

with

SPECIAL CIVIL APPLICATION No 7973 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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DHARMENDRA HARMANBHAI PATEL

Versus

SARDAR PARK COOP HOS SOCIETY  
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Appearance:

1. Special Civil Application No. 320 of 1989  
MR SHIRISH JOSHI for Petitioner  
MR HM PARIKH for Respondent No. 1  
NOTICE SERVED for Respondent No. 2
2. Special Civil ApplicationNo 7973 of 1988  
MR SHIRISH JOSHI for Petitioner  
MR HM PARIKH for Respondent No. 1  
NOTICE SERVED for Respondent No. 2  
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Date of decision: 14/09/2000

ORAL JUDGEMENT

In both these petitions under Article 226 of the Constitution of India, the petitioners pray for issuance of a Writ of Certiorari or any other appropriate Writ quashing and setting aside the judgement and order dt. 30th September, 1988 passed by the Gujarat Co-operative Tribunal in Appeal Nos. 36/88 and 37/88, whereby both the appeals came to be dismissed and the judgement and award dtd.28/1/88 passed by the Board of Nominees in Lavad Suits Nos. 513 and 515 of 1982, came to be confirmed.

2. Shortly stated the facts leading the petitioners to file these petitions are that the respondent No.1 is the Co-operative Housing Society consisting of A-Type 33 and B-Type 13 Tenements. The Tenements Nos.B/1 and B/2 originally stood in the name of Lalitaben Ambalal. The petitioners are the members of respondent NO.1 - society. The Tenement No.B/1 originally belonged to Vinodbhai Ishvarbhai Patel from whom Smt. Pushpaben Harmanbhai Patel petitioner of S.C.A. No.7973 of 1988, has purchased the said tenement. The Tenement No.B/2 originally belonging to Lalitaben Ambalal, has been purchased by Dharmendra Harmanbhai Patel - petitioner of S.C.A. No.320 of 1989. The respondent No.1 then filed the Lavad Suit being Lavad Suits Nos. 513/82 and 515/82 against both the petitioners to recover the loan amount outstanding on its record qua above referred two Tenements. The suit was hotly contested by the petitioners, wherein one of the contentions they raised is that the suit is bad in law right from its inception because without resolution being passed by the General Body authorising to file the suit, the said suit was instituted, which was contrary to Bye-Laws of Respondent NO.1. The Board of Nominees on 28/1/1988, however making mistake, allowed the suit and passed the award directing the petitioners to pay the amount together with interest. Against that decision, the Appeals Nos.36/88 and 37/88 were filed by the petitioners in the Gujarat Co-operative Tribunal, Ahmedabad. The Tribunal dismissed both the appeals on 30/9/1988 confirming the awards passed by the Board of Nominees. The said decision in the appeal is under challenged in these two petitions.

3. The learned advocate for the petitioners submitted that the issue going to the root of the case

has not been considered by both the Forums below, though necessary contention was raised. Without the resolution of the General Body authorising to file the suits, when the suits were filed, in view of the Bye-laws No. 51 (9), the inception of the suits itself is bad in law, and the suits being not tenable on that count ought to have been dismissed, instead that when unfortunately the awards are passed ignoring the material issue going to the root of the case, they are inherently bad and cannot be allowed to be sustained. Their subsistence being contrary to law, it would be in the interest of justice to upset the awards.

4. In reply to the such contention, Mr. Shah, the learned advocate representing the otherside drawing my attention to the decision of the Supreme Court rendered in the case of Mohd. Yunus. vs. Mohd. Mustaquim and ors., A.I.R. 1984 S.C. 38 which is also followed by this Court in the case of Chhagan Ranchhod Kukvava vs. General Manager, Western Railway, Bombnay and Anr., 1998(1) G.L.H. 461 submits that jurisdiction of this Court is limited and even if there is a wrong decision without anything more either on the law or fact, this Court cannot interfere and cannot correct the error because this Court does not sit in an appeal against the awards passed. This Court also cannot review or re-weigh the evidence. This application may, on this count be dismissed because in the case on hand, there is neither jurisdictional error nor procedural error.

5. The Court can exercise the Writ jurisdiction not only in the cases where there is jurisdictional error or procedural error, but also in the cases where the fundamental rights are violated or enforcement of a legal right is necessary or the authority disregarding the facts and materials on record, arbitrarily passed the order leading to miscarriage of justice, or the authority has not acted in conformity with the principles of natural justice, or it has decided on extraneous consideration or has passed the order in bad faith, or the order is perverse or unreasonable or absurd, or interference in the interest of justice is necessary so as to do complete justice, or the question of consideration of statutory provisions is involved, or constitutional point is raised, or question relating to statutory duty or obligation is involved, or compliance or implementation of the order is difficult or injurious or confusing or embarrassing or places the party between the devil and the deep sea.

6. Mr. Joshi, the learned advocate representing the petitioners has drawn my attention to the observations made by the Board of Nominees. In the judgement at one stage, the evidence of Rambhai Ishvarbhai Patel, the Secretary of respondent NO.1 (Ex.15) who has stated that the resolution of the General Body is not produced on record is referred to simpliciter; while in concluding portion it is mentioned that the resolution dtd. 14/2/1980 is produced at 19. Nothing further is discussed, stated or decided about such cross-cutting facts going to the root of the case, though taken the note of. Whether the resolution in question was really produced on record and what was the effect qua inception of the suit if the resolution was not produced is the point conveniently ignored; and it is surprising to note that the appellate authority has also turned its blind eye to the point and has abstained from giving any decision on the point whether resolution was there on the record and if not whether institution of the suits is vitiated and bad in law. Both the authorities below ought to have considered this vital issue effecting the legality of the awards passed. Keeping the submission made on behalf of the Respondent No.1 in mind the question that arises for consideration is whether it would be just and proper for this Court to interfere with the awards exercising powers under Article 226 or 227 of the Constitution. When material point though noticed but is ignored, the awards passed must be termed arbitrary or unreasonable; and so interference in the interest of justice to do complete justice is necessary.

7. For the aforesaid reasons, both the appeals are allowed. The judgement and order passed by the Gujarat Revenue Tribunal in Appeals Nos. 36/88 and 37/88 on 30th September, 1988, are hereby quashed and set aside; and the Tribunal is directed to hear the Appeals Nos.36/88 and 37/88 afresh and consider whether in fact the resolution of the General Body, authorising to institute the suit, is produced on record and if not what is the effect thereof; and then pass appropriate order in accordance with law.

Rule accordingly made absolute.

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